

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011366

05/24/2016

HONORABLE JANET E. BARTON

CLERK OF THE COURT
A. Gonzalez
Deputy

VAN E FLURY

VAN E FLURY
P O BOX 875
LAVEEN AZ 85339

v.

GATEWAY CHEVROLET INC

WILLIAM JAMES FISHER

JUDGE GAMA

RULING

On June 5, 2015, Judge Gama issued a minute entry in which he found Plaintiff Van Flury to have engaged in vexatious conduct, granted defendant's motion to designate the plaintiff as a vexatious litigant in this case, and referred the matter to the Civil Presiding Judge for consideration of whether to issue an Administrative Order placing pre-filing restrictions on Mr. Flury for any future civil cases he sought to file in this court. The minute entry indicates that a copy was sent to the Civil Presiding Judge. However, Superior Court Administrative Order 2014-134 requires the matter to be referred to the Presiding Judge of the Court, rather than the Civil Presiding Judge. In June 2015, the Office of Presiding Judge was in transition from the former Presiding Judge, who was retiring from the bench, to the current Presiding Judge. The end result was that the referral was never addressed. The lack of ruling on the request for consideration of an Administrative Order was recently brought to the Court's attention. The Court having reviewed the request for consideration of an Administrative Order and all pleadings and relevant documents pertaining thereto, now rules as follows.

Arizona courts, as well as the legislature, have recognized the ability to declare a litigant vexatious and place appropriate pre-filing restrictions on the litigant. The Arizona Court of Appeals has stated:

Arizona courts possess inherent authority to curtail a vexatious litigant's ability to initiate additional lawsuits. *See Acker v. CSO Chevira*, 188 Ariz. 252, 254, 934 P.2d 816, 818 (App.1997) (defining a court's inherent authority as "such powers as are necessary to the ordinary and efficient exercise of jurisdiction"); *De Long v.*

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Hennessey, 912 F.2d 1144, 1147 (9th Cir.1990) (recognizing strong precedent establishing inherent authority of federal courts “to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances”) (citation omitted). Because access to courts is a fundamental right, *DeVries v. State*, 219 Ariz. 314, 321–22, ¶¶ 22–23, 198 P.3d 580, 587–88 (App.2008), such orders must be entered sparingly and appropriately. *De Long*, 912 F.2d at 1147 (noting courts should rarely enter vexatious litigant orders, which serve as exceptions to the general rule of free access to courts).

In *De Long v. Hennessey*, the Ninth Circuit set forth principles for courts to observe when ordering pre-filing restrictions: (1) to satisfy due process, the litigant must be afforded notice and an opportunity to oppose the order, (2) the court must create an adequate record for appellate review that includes a listing of all cases and motions leading the court to enter the order, (3) the court must make “ ‘substantive findings as to the frivolous or harassing nature of the litigant's actions,’ ” and (4) the order “must be narrowly tailored to closely fit the specific vice encountered.” *Id.* at 1147–48 (citation omitted).

Madison v. Groseth, 230 Ariz. 8, 14 ¶¶ 16-17, 279 P.3d 633, 639 (App. 2012) (footnote omitted).

The Superior Court in Maricopa County has limited its orders declaring vexatious litigants to those whose filings in this court are extensive, as well as clearly frivolous or harassing based on the allegations in the complaints. The court has reviewed the cases filed by Mr. Flury in the past ten years. Mr. Flury has filed 32 civil cases in this court in the past 10 years, 12 of which were in the last five years. Of the 32 cases filed in the past 10 years, three were requests for injunctions against harassment, two of which were granted; two of the cases were removed to federal court; two were settled; seven resulted in stipulated dismissals; two were voluntarily dismissed by Mr. Flury; and one is still pending. In one case, the trial judge declined to impose sanctions on Mr. Flury at the conclusion of the case.

In addition, the allegations in the complaints filed by Mr. Flury are not clearly frivolous or harassing on their face. He does not routinely sue over the same facts or sue the same defendants. Rather, several of his cases demonstrate a misunderstanding of the law, such as that he cannot file a complaint on behalf of a trust or regarding property to which he does not own. His filings do not evidence that he is an obsessive plaintiff (concentrating on a particular set of events or set of individuals) or a recreational litigant (one who files litigation as a pastime and views it as a game or sport). At this point, the record does not rise to the level sufficient to place pre-filing restrictions on Mr. Flury. Therefore,

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IT IS ORDERED denying without prejudice the request to declare Mr. Flury a vexatious litigant with an order that precludes him from filing a case without permission of the court. This ruling does not impact the finding by Judge Gama in the June 5, 2015 minute entry that Mr. Flury engaged in vexatious conduct and is a vexatious litigant in this cause number.